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JUN 19 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 92-50
	)	
	)	
GOLDEN CORNERS BROADCASTING, INC.	)	File No. BPH-901218MH
	)	
FISHER COMMUNICATIONS OF	)	
CLEMSON, INC.	)	File No. BPH-901219MB
	)	
CLEMSON BROADCASTING, INC.	)	File No. BPH-901219MD
	)	
	)	
For a Construction Permit for	)	
A New FM Station	)	
Clemson, South Carolina	)	

To: Administrative Law Judge  
Walter C. Miller

**MASS MEDIA BUREAU'S COMMENTS**

1. By Memorandum Opinion and Order released June 9, 1992, FCC 92M-651 ("MO&O"), the Presiding Judge requested the parties' comments regarding the impact of CC Docket No. 91-142 on the Joint Petition for Approval of Settlement Agreement which is pending in the above-captioned proceeding.<sup>1</sup> The Mass Media Bureau submits the following comments.

2. The Joint Petition, filed May 4, 1992, seeks approval of a settlement agreement whereby the application of Fisher Communications of Clemson, Inc. would be dismissed, and Golden

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<sup>1</sup> The Bureau supported the Joint Petition in Comments filed May 14, 1992.

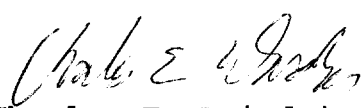
Corners Broadcasting, Inc. ("GCBI"), and Clemson Broadcasting, Inc. ("Clemson") would merge their interests into a new corporation to operate the proposed station. Through Clemson, one Becky Jo Clark would be a party to the merger. The MO&O points out that Ms. Clark is a 14.77% equity holder and an active partner in Alee Cellular Communications ("Alee"). The Chief, Common Carrier Bureau has ordered Alee to show cause why its cellular license should not be revoked. See Algreg Cellular Engineering, 6 FCC Rcd 2921 (1991) (CC Docket No. 91-142). The MO&O indicates that the Show Cause Order raises questions about Alee and its principals which have character overtones. A hearing has been held, but an Initial Decision has not been issued.

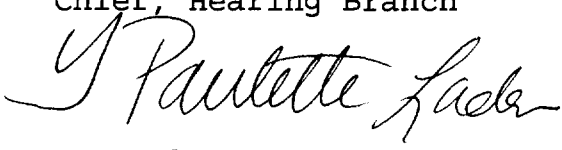
3. First of all, the Mass Media Bureau submits that the issues raised in CC Docket No. 91-142 are not subject to the principle of collateral estoppel. In order for that principle to operate to preclude the relitigation of an issue, the prior adjudication must have reached the stage of being a final judgment on the merits. Here, no judgment has been reached at all. Even if a final decision existed, the party to be estopped from relitigating the issue, here, the GCBI/Clemson merged entity, must have been a party to the prior litigation, or in privity to such a party, and must have had a fair and full opportunity to litigate the issue in the prior case. See Montgomery County Media Network, d/b/a Imagists, 4 FCC Rcd 3749

(Rev. Bd. 1989). Clearly, none of these factors apply here. Accordingly, GCBI and Clemson would have the right to relitigate the issues raised in CC Docket No. 91-142 here.

4. The Bureau recommends that the GCBI/Clemson merged application be granted, with a condition indicating that the grant is without prejudice to any action which the Commission may take following a final decision in CC Docket No. 91-142. Thus, if Ms. Clark remained a principal of the GCBI/Clemson merged entity, the Commission would be free to consider the effect of any adverse findings upon her qualifications to remain a Commission licensee or permittee. See, e.g., Western Cities Broadcasting, Inc., 5 FCC Rcd 6177, 6178-79 (1990).

Respectfully submitted,  
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June 19, 1992

**CERTIFICATE OF SERVICE**

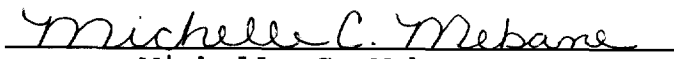
Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 19th day of June, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments" to:

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